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10 | Attorneys for Defendant R. Darr

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 | MATTHEW L. JOHNSON,

Plaintiff,

18 | DARR,

08-CV-0080-DMS (POR)

## **WYATT NOTICE TO PLAINTIFF**

Hearing: August 28, 2008  
Time: 2:00 p.m.  
Courtroom: H  
Judge: The Honorable  
Louisa S. Porter

21 TO MATTHEW L. JOHNSON, Plaintiff in pro per:

22 PLEASE TAKE NOTICE that Defendant Darr has moved to dismiss one or more of  
23 Plaintiff's claims based on Plaintiff's failure to exhaust administrative remedies before filing suit  
24 as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e. A defendant may move to  
25 dismiss a claim for lack of exhaustion of nonjudicial remedies through an unenumerated Rule  
26 12(b) motion. *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003).

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1        "In deciding a motion to dismiss for failure to exhaust nonjudicial remedies, the court  
2 may look beyond the pleadings and decide disputed issues of fact." *Id.* at 1119-1120. The  
3 parties may tender admissible evidence to create an evidentiary record sufficient for the court to  
4 determine if the plaintiff properly exhausted his or her administrative remedies before filing suit.  
5 *See id.* at 1120 n.14. You have the right to file counter-affidavits or other responsive evidentiary  
6 materials in opposition to Defendant's motion to dismiss for lack of exhaustion of administrative  
7 remedies. If you fail to produce such counter-evidence, Defendant's evidence might be taken as  
8 the truth, and the Court may grant Defendant's motion. If the Court grants the motion to  
9 dismiss, some or all of your claims in this litigation may be dismissed.

10      Dated: July 17, 2008

11      Respectfully submitted,

12      EDMUND G. BROWN JR.  
13      Attorney General of the State of California

14      DAVID S. CHANEY  
15      Chief Assistant Attorney General

16      ROCHELLE C. EAST  
17      Acting Senior Assistant Attorney General

18      MICHELLE DES JARDINS  
19      Supervising Deputy Attorney General

20      /s/Phillip Lindsay

21      PHILLIP LINDSAY  
22      Deputy Attorney General  
23      Attorneys for Defendant

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SD2008700481

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Johnson, Matthew L. v. Darr**

No.: 08CV0080 DMS POR

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On July 18, 2008, I served the attached **WYATT NOTICE TO PLAINTIFF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

Matthew L. Johnson  
D-33369  
California Training Facility  
DW-315 UP  
CTF Central  
P.O. Box 689  
Soledad, CA 93960

In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 18, 2008, at San Diego, California.

K. Alvarez

**Declarant**

Signature

70130652.wpd